



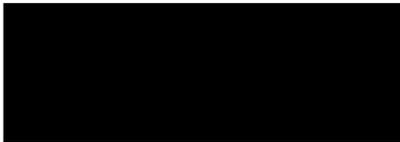
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U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.L.B., 3rd Floor
Washington, D.C. 20536



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prevent clearly unwarranted
invasion of personal privacy
JAN 10 2003

File: WAC 02 039 50638

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra S. Roseally
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a real estate company dealing in retail, wholesale, commercial property, and related services. It seeks to employ the beneficiary in Guam as an assistant general manager. The director determined that the petitioner had not provided evidence that the beneficiary had been employed in a managerial or executive capacity abroad.

On appeal, counsel states that the beneficiary has been filling a managerial position by virtue of his traditional supervisory responsibilities, his management of a critical function of the organization which is the organization itself, and by virtue of his extensive discretion in decision making which also fits the definition of "executive capacity." Counsel explains that even if the Services is not convinced of his managerial capacity abroad, the beneficiary's employment abroad has been in a position involving specialized knowledge.

To establish L-1 eligibility under Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2(l)(1)(ii), in part, states:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L).

The issue in this proceeding is whether the petitioner has established that the beneficiary has been employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision-making; and

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the petition, the petitioner described the beneficiary's job duties abroad as follows:

Real Estate Manager: controls the company's budget, daily operations and all aspects of the real estate management function, and holds full managerial, discretionary authority to make decisions regarding

leasing, real estate maintenance and operations in order to ensure an increase in the value of Pomika's properties.

The record indicates that the foreign company named Pomika Real Estate consisted of the beneficiary, an assistant manager and the company's maintenance man.

On appeal, counsel argues that the beneficiary is a manager because he manages the whole organization. Counsel indicates that the beneficiary's supervisory responsibilities over the two listed employees included the following:

- Holds discretionary authority for hiring;
- Supervises, monitors, and controls their work
- Holds discretionary authority for promotion, termination, and leave requests.

Counsel argues the beneficiary has managerial responsibilities as follows:

- Holds full managerial, discretionary authority over leasing, real estate maintenance and operation;
- Oversees the performance of income-producing properties;
- Leads and manages the financial operations of the properties to ensure that mortgages, taxes, insurance premiums, and maintenance bills are paid on time;
- Presents regular reports to the President of the ultimate property company, Saipan Corp., regarding the value and status of the properties, occupancy rates, and related matters;
- Has contract negotiating authority for janitorial, security, groundskeeping, trash removal, and other services;
- Oversees and approves the purchase of supplies and equipment;
- Performs periodic inspections of the properties;
- Oversees enforcement of lease agreements;
- Ensures all operations and maintenance are conducted within allotted budget parameters;
- Ensures compliance with all applicable housing and commercial regulations.

Counsel's assertion concerning the specialized knowledge aspects of the beneficiary's duties is not persuasive. The petitioner's description of the beneficiary's job duties abroad are not sufficient to warrant a finding of specialized knowledge. It is noted that the assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the

purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The beneficiary's entire staff abroad consisted of an assistant manager and a company maintenance man. It is determined that the record contains insufficient evidence to demonstrate that the beneficiary has been acting in a managerial or executive capacity abroad. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.